WAC 463-78-140 Appeals procedure. (1) **Appeal of permits issued pursuant to WAC 173-400-110.**

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) **Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.**

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(3) **Appeal of operating permits issued pursuant to chapter 173-401 WAC.**

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the federal Clean Air Act, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

(4) **Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.**

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 C.F.R. parts 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 C.F.R. part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than 30 days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 C.F.R. part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 C.F.R. part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within 30 days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-70-070 (4)(c).

[Statutory Authority: RCW 80.50.040(1). WSR 25-12-020, s 463-78-140, filed 5/22/25, effective 6/22/25. Statutory Authority: RCW 80.50.040 (1) and (12). WSR 06-06-037, § 463-78-140, filed 2/23/06, effective 3/26/06; WSR 04-21-013, recodified as § 463-78-140, filed 10/11/04,

effective 11/11/04. Statutory Authority: RCW 80.50.040(1) and chapter 70.94 RCW. WSR 93-23-035, § 463-39-140, filed 11/10/93, effective 12/11/93.]